REMARKS

Claims 1-39 remain pending.

Claims 24-30 have been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. More particularly, the Final Office Action states that claims 24-30 are drawn to a computer readable medium and that the specification is silent regarding the meaning of this term (Final Office Action - page 2). The applicants respectfully disagree.

Claims 24-30 recites a "tangible computer readable memory comprising computer executable instructions". Claims 24-30 do not recite a computer readable medium, as alleged in the Final Office Action. Further, the applicants assert that a tangible computer readable memory comprising computer executable instructions is drawn to statutory subject matter. Accordingly, withdrawal of the rejection of claims 24-30 under 35 U.S.C. § 101.

In addition, the applicants note that claims 24-30 were not substantively amended in the response filed May 19, 2010. Therefore, any new grounds of rejection with respect to claims 24-30, such as the rejection of claims 24-30 under 35 U.S.C. § 101, would constitute a new grounds of rejection that was not necessitated by any amendment. Accordingly, the applicants respectfully request withdrawal of the finality of the present Office Action so that all the arguments provided herein can be fully considered.

Claims 1-5, 8, 12-14, 16-19, 21-26, 28-31, 34, 35 and 37-39 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Or et al. (U.S. Patent Application Publication No. 2002/0067742; hereinafter Or) in view of Barry et a. (U.S. Patent No. 7,225,249; hereinafter Barry) and further in view of Blom et al. (U.S. Patent Application Publication No. 2007/0160201; hereinafter Blom). The rejection is respectfully traversed.

Without addressing the alleged teachings of Or, Barry and Blom, the applicants note that the present application and Barry were both commonly assigned or subject to an obligation of assignment to WorldCom Inc., at the time the applicants' invention was made. For example, see the Assignments for Barry recorded at Reel 009632, Frame 0315 and Reel 012613, Frame 0277 indicating that the Assignee at the time the applicants' invention was made was WorldCom, Inc. Similarly, see the Assignment for the present application recorded at Reel 015164, Frame 0358 indicating that the Assignee at the time the applicants' invention was made was WorldCom, Inc. Barry, therefore, cannot preclude patentablility under 35 U.S.C. § 103 in light of the American Inventors Protection Act of 1999 (hereinafter AIPA), effective for all applications filed on or after November 29, 1999.

Section 103(c) of 35 U.S.C. states: "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

The present application was filed on March 29, 2004, which is after the November 29, 1999 enactment date of this provision of the AIPA and before the May 29, 2007 issue date of Barry. Thus, Barry (which was filed on September 24, 1998) would qualify as prior art with respect to the present application only under subsection (e) of 35 U.S.C. § 102. Since the present application and Barry were both commonly assigned or subject to an obligation or assignment to WorldCom, Inc. at the time the applicants' invention was made, Barry cannot be used to preclude patentability of the present invention under 35 U.S.C. § 103.

For at least this reason, withdrawal of the rejection and allowance of claims 1-5, 8, 12-14, 16-19, 21-26, 28-31, 34, 35 and 37-39 are respectfully requested.

Claims 6, 7, 9-11, 15, 20, 32, 33 and 36 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Or in view of Barry and Blom and further in view of Turtiainen (U.S. Patent Application Publication No. 2002/0059516; hereinafter Turtiainen). The rejection is respectfully traversed.

As discussed above, Barry would qualify as prior art with respect to the present application only under subsection (e) of 35 U.S.C. § 102. Since the present application and Barry were both commonly assigned or subject to an obligation or assignment to WorldCom, Inc. at the time the applicants' invention was made, Barry cannot be used to preclude patentability of the present invention under 35 U.S.C. § 103.

For at least this reason, withdrawal of the rejection and allowance of claims 6, 7, 9-11, 15, 20, 32, 33 and 36 are respectfully requested.

Claims 7 and 27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Or in view of Barry, Blom and Turtiainen and further in view of Gray et al. (U.S. Patent Application Publication No. 2008/0189353; hereinafter Gray). The rejection is respectfully traversed.

As discussed above, Barry would qualify as prior art with respect to the present application only under subsection (e) of 35 U.S.C. § 102. Since the present application and Barry were both commonly assigned or subject to an obligation or assignment to WorldCom, Inc. at the time the applicants' invention was made, Barry cannot be used to preclude patentability of the present invention under 35 U.S.C. § 103.

For at least this reason, withdrawal of the rejection and allowance of claims 7 and 27 are respectfully requested.

CONCLUSION

In view of the foregoing remarks, the applicants respectfully request withdrawal of the outstanding rejections and the timely allowance of this application. In the event that the application is not considered in condition for allowance, the applicants respectfully request withdrawal of the finality of the present Office Action for the reasons discussed above.

In addition, as the applicants' remarks with respect to the Examiner's rejection are sufficient to overcome this rejection, the applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, assertions as to dependent claims, etc.) is not a concession by the applicants that such assertions are accurate or such requirements have been met, and the applicants reserve the right to analyze and dispute such in the future.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-4752 and please credit any excess fees to such deposit account.

Respectfully submitted,

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